

Update: Traffic Benchbook— Revised Edition, Volume 2

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.13 Failures to Appear in Court or to Comply with a Judgment

B. License Suspension

3. Duration of Sanction

Replace the second bullet in Section 2.13(B)(3) on p 2-76 with the following bullet:

- The person has paid the court a \$45.00* driver license clearance fee for each failure to answer a citation or failure to pay a fine or cost. Under MCL 257.321a(11)(a)-(c), the court must distribute this new \$45.00 fee as follows:
 - (1) \$15.00 to the Secretary of State;
 - (2) \$15.00 to the local funding unit; and
 - (3) \$15.00 to the Juror Compensation Reimbursement Fund.

*Effective January 1, 2003, 2002 PA 741 amended MCL 257.321a(8)(b) and increased the driver license clearance fees from \$25.00 to \$45.00.

CHAPTER 3

Section 625 Offenses

3.4 OUIL/OUID/UBAC/OWI Causing Death of Another — §625(4)

A. Elements of Offense

5. By the operation of the vehicle, the defendant caused the death of another person.

- Double Jeopardy

Insert the following language at the end of this subsection:

A conviction of both second-degree murder under MCL 750.317 and OUIL causing death under Vehicle Code §625(4) is not violative of state or federal double jeopardy provisions. *People v Werner*, ___ Mich App ___, ___(2002).

- Distinguishing Requisite Intent for Second-degree Murder and OUIL Causing Death

Insert the following language at the end of this subsection:

In *People v Werner*, ___ Mich App ___ (2002), the Court of Appeals reaffirmed the principle articulated in *Goecke*, *supra* [*People v Goecke*, 457 Mich 442, 464-465 (1998)], that extreme intoxication does not necessarily require proof that the defendant was “subjectively” aware of the risk created by his or her conduct. In *Werner*, the defendant was convicted of second-degree murder and OUIL causing death after becoming seriously intoxicated and driving his pick-up truck the wrong direction on a freeway and colliding with a Jeep, killing the passenger and seriously injuring the driver. During the trial, the prosecution showed that defendant was not only extremely intoxicated but that he also knew, from a recent incident, that if he drank alcohol he could experience a black-out and drive recklessly and irresponsibly. On appeal, relying on dicta in *Goecke*, defendant claimed that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to support his second-degree murder conviction. Specifically, defendant argued that since he was seriously intoxicated and since this was a “highly unusual case,” the prosecutor was required to prove that he

was “subjectively” aware of the risk of death or great bodily harm. The Court of Appeals disagreed, holding:

“*Goecke* did not expressly prescribe a subjective analysis for malice in cases of extreme intoxication. . . . [T]he Court recognized that, theoretically, a ‘highly unusual case’ may require a determination of whether the defendant was subjectively aware of the risk his conduct created, such as where the defendant was ‘more absent-minded, stupid or intoxicated than the reasonable man.’ . . . This is not the same as stating, as defendant suggests, that plaintiff should have been held to a higher standard of proof of intent because defendant was so severely intoxicated. If defendant’s argument is correct, it would mean that moderately intoxicated drivers could be tried for and convicted of second-degree murder while severely intoxicated drivers would be excused because they were too intoxicated to know what they were doing. This would be contrary to the *Goecke* Court’s statement that ‘malice requires egregious circumstances.’ . . . It also would effectively create for some defendants an intoxication defense to second-degree murder, which would be plainly contrary to the *Goecke* Court’s holding that voluntary intoxication is not a defense to a second-degree murder charge. . . . Accordingly, an advanced state of voluntary intoxication is not sufficient to qualify as the sort of ‘unusual case’ that requires a subjective determination of awareness under *Goecke*.” *Werner, supra* at _____. [Citations omitted.]

In concluding that the trial court did not err in denying defendant’s motion for directed verdict, and that there was sufficient evidence to support his second-degree murder conviction, the Court held that this was “not a case where a defendant merely undertook the risk of driving after drinking.” *Id.* at _____. Instead, the Court found that “[d]efendant knew, from a recent prior incident, that his drinking did more than simply impair his judgment and reflexes. He knew that he might actually become so overwhelmed by the effects of alcohol that he would completely lose track of what he was doing with his vehicle. If defendant knew that drinking before driving could cause him to crash on boulders in front of a house, without any knowledge of where he was or what he was doing, he knew that another drunk driving episode could cause him to make another major mistake, one that would have tragic consequences.” *Id.*